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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/717,254	11/19/2003	Jean-Michel Auclair	D-3144	7760
48418	7590	08/02/2005	EXAMINER	
PARKS KNOWLTON LLC 1117 PERIMETER CENTER WEST SUITE W307 ATLANTA, GA 30338			GEHMAN, BRYON P	
			ART UNIT	PAPER NUMBER
			3728	

DATE MAILED: 08/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

TAK

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/717,254	AUCLAIR ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Bryon P. Gehman	3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 29 June 2005.

2a) This action is **FINAL**.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 20-39 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 20-39 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_.

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 20-39 are finally rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 20, line 7, and "said article group "is indefinite, as" group of articles is the language previously said. Applicants' language is inconsistent or indefinite. See also claims 28 and 29, lines 2-3 and 3, respectively. The patentable significance of imaginary future articles being disposed in columns and rows is indefinite; as such contents are never positively defined as part of the claimed structure in the claims. "A carton for enclosing a group of cylindrical articles" does not define a group of articles per se.

In claim 22, line 1, "said article" is inconsistent with claim 20, line 6, as originally "at least one article" is recited, now only a single article. See also claims 23 and 24, line 1 of each. See also claims 23 and 24. In line 2, there is no basis for "uppermost row".

In claims 25-27, line 1 of each, "said detachable portion" is inconsistent with claim 20, line 4, "at least one detachable portion".

Claims 32 and 33 are duplicates of claims 30 and 31, rendering each duplicate claim redundant.

In claim 34, line 7, "an upper and a lower severance line" is indefinite, as it appears only one severance line is being defined. Accordingly, in line 9, "upper and

lower severance lines" lacks antecedent basis from line 7. See also claim 37 for the same problems.

In claim 36, lines 1-2, "said severance line in said first wall and said second wall" is indefinite, as plural severance lines have been defined but nary a single line in both walls. In line 11, a single endmost article does not define an endmost column, but the endmost articles do, although the latter is not so defined. See also claim 39.

3. Claims 32 and 33 are objected to under 37 CFR 1.75 as being substantial duplicates of claims 30 and 31, respectively. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or  
(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

5. Claims 20-21 and 23-29 are finally rejected under 35 U.S.C. 102(b) as being anticipated by Vizethann (3,237,837). Claims 20-22 and 25-29 are finally rejected under 35 U.S.C. 102(e) as being anticipated by Miller (Figures 7-10)(2004/0089671). Claims 20-21 and 25-29 are finally rejected under 35 U.S.C. 102(e) as being anticipated by Bates (2004/0232214). Each discloses a carton for enclosing a group of cylindrical articles comprising a plurality of walls (12-18, 24-30; 114-120; 16-24) hingedly connected to one another, and at least one detachable portion (56, 58; 174; 70).

As to claim 21, each discloses at least one partially detachable portion (60; 176 in Figure 10; 80).

As to claim 22, Miller discloses an uppermost row article being exposed.

As to claim 23, Vizethann discloses a lowermost row article being exposed.

As to claim 24, Vizethann discloses a vertical row between upper and lower rows.

As to claim 25, the at least one detachable portion is defined by a frangible line (50, 52; 194, 194a; 50, 52).

As to claims 26 and 27, the at least one partially detachable portion is defined in part by a frangible line (62; 188; 64 or 66) and a fold line (20; 190; 54).

As to claims 28 and 29, the openings of each could so act if the articles were actually located in the carton.

6. Claims 30-33 are rejected under 35 U.S.C. 102(e) as being anticipated by Spivey (6,578,736). Claims 30-33 are rejected under 35 U.S.C. 102(b) as being anticipated by

Lingamfelter (6,283,293). Each discloses a package comprising a plurality of cylindrical articles (C; A) disposed on sides thereof in a plurality of rows, wherein the endmost article in each of said rows defines an endmost column of articles and the articles adjacent to the endmost column of articles define a second endmost column of articles, and a carton (10; 10) enclosing the articles, the carton comprising a first wall (16 or 24; S/W) extending along ends of the articles in the rows and a second wall (42 and 90 or 50 and 92; F/W) hingedly connected to the first wall and extending along the sides of the articles in the endmost row, and at least one detachable portion (42 and 79 or 50 and 79; 12) detachably formed at least in part from the first wall and at least in part from the second wall, the at least one detachable portion when detached defining an opening that extends along the first wall, the opening exposing a space between the endmost column and the second endmost column (see Figure 3; see Figure 1B), the space being defined by articles that are in adjacent rows.

As to claims 31 and 33, Spivey discloses an upper row and a lower row.

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 31 and 33 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Lingamfelter ('293) in view of Spivey. To provide only two rows in the

package of Lingamfelter would have been obvious in view of Spivey as a different array of a dozen articles for dispensing as was already known in the art.

9. Claims 34, 36-37 and 39 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Vizethann in view of Carr (3,263,861). Vizethann discloses a package comprising a plurality of cylindrical articles (as shown) disposed on sides in a plurality of rows and a carton (10) enclosing the articles, the carton comprising a first wall (24, 26, 36 and 38) extending along ends of the articles and a second wall (16) hingedly connected to the first wall and extending along the sides of the endmost articles in each of the rows, a removable portion (56, 58 and 60) defined by separable lines in each of the first and second walls, wherein the endmost articles in the plurality of rows define an endmost column of articles, the articles adjacent the endmost column define a second endmost column and the removable portion in the first wall defines an opening that extends along the first wall, the opening exposing a space between the endmost column and the second endmost column (not shown, but inherent from the shown article size and the shown opening size). Carr discloses a removable portion R defined by upper and lower severance lines (65 in Figure 5 and at 42 and the free edge of 26) in a second wall (18) and a connecting severance line (49 or 50) in the first wall. To modify the package of Vizethann employing the severance line arrangement of Carr would have been obvious in order to totally remove the removable portion from the carton so that it does not hinder dispensing of the articles.

As to claims 36 and 39, the relationship between severance lines appears met by the arrangement of Vizethann, as much as the subject matter can be ascertained.

10. Claims 35 and 38 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claims 34 and 37 above, and further in view of Spivey ('736). To provide only two rows in the package of Vizethann as modified by Carr would have been obvious in view of Spivey as a different array of a dozen articles for dispensing as was already known in the art.

11. Applicant's arguments filed June 29, 2005 have been fully considered but they are not persuasive with respect to the rejections still made. With respect to claims 20-29, they remain, as written absent of contents, the references therein to articles being held imaginary and the relationship of the articles to the claimed carton as intended use, as applicants never positively include the articles in the claimed carton *per se*. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963).

With respect to the prior art and claim 21, the described partially detachable portion (60; 176 in Figure 10; 80) of each reference will restrain articles by using the same portion as a closure flap for the opening provided.

With respect to claims 22-24, since applicant does not positively include the articles in the claimed carton of claims 20-29, the relative exposure is arbitrary. By removing the detachable portion, all of the imaginary articles to be contained will be exposed as they all can thereby be removed in turn from the carton.

With respect to claims 28 and 29, since applicants do not actually include articles in the carton, the relationship of the intended contents is arbitrary, as the imaginary contents could be of various sizes.

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bryon P. Gehman whose telephone number is (571) 272-4555. The examiner can normally be reached on Monday through Wednesday from 5:30am to 6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu, can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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BPG